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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

JUN 28 2001

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
SERVISENSE.COM, INC. FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
PROVIDE COMPETITIVE RESOLD LOCAL
EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03893A-00-0447

DECISION NO. 63834**ORDER**

Open Meeting
June 26 and 27, 2001
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 27, 2000, ServiSense.com, Inc. ("Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold local exchange and interexchange telecommunications services within the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. Applicant is a Delaware corporation, authorized to do business in Arizona since 2000.

4. Applicant is a switchless reseller, which purchases telecommunications services from a variety of carriers.

5. On September 6, 2000, ServiSense.com, Inc. filed Affidavits of Publication indicating compliance with the Commission's notice requirements.

6. On March 2, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter. In its Staff Report, Staff stated that ServiSense.com, Inc. provided financial

1 statements for the year ended December 31, 1999. These financial statements list assets of \$2
2 million, total equity of \$566,663, and a net loss of \$1.8 million. Based on the foregoing, Staff
3 believes that Applicant lacks adequate financial resources to provide resold local exchange service in
4 the State of Arizona absent the procurement of a performance bond. Since ServiSense.com, Inc. does
5 not appear to have sufficient financial resources, Staff believes that any advances, deposits, or
6 prepayments received from the Applicant's customers should be protected by the procurement of a
7 performance bond.

8 7. Staff recommended approval of the application subject to the following conditions,
9 that:

10 (a) The Applicant shall comply with all Commission rules, orders, and other
11 requirements relevant to the provision of intrastate telecommunications service;

12 (b) The Applicant shall maintain its accounts and records as required by the
13 Commission;

14 (c) The Applicant shall file with the Commission all financial and other reports
15 that the Commission may require, and in a form and at such times as the Commission
may designate;

16 (d) The Applicant shall maintain on file with the Commission all current tariffs
17 and rates, and any service standards that the Commission may require;

18 (e) The Applicant shall comply with the Commission's rules and modify its tariffs
19 to conform to these rules if it is determined that there is a conflict between the
Applicant's tariffs and the Commission's rules;

20 (f) The Applicant shall cooperate with Commission investigations of customers
21 complaints;

22 (g) The Applicant shall participate in and contribute to a universal service fund, as
23 required by the Commission;

24 (h) The Applicant shall notify the Commission immediately upon changes to the
Applicant's address or telephone number;

25 (i) The Applicant's local exchange service offerings should be classified as
26 competitive pursuant to Commission rules;

27 (j) The Applicant's competitive services should be priced at the rates proposed by
28 the Applicant in its most recently filed tariffs. The maximum rates for these services
should be the maximum rates proposed by the Applicant in its proposed tariffs. The

1 minimum rates for the Applicant's competitive services should be the Applicant's total
2 service long run incremental costs of providing those services;

3 (k) In the event that the Applicant states only one rate in its proposed tariff for a
4 competitive service, the rate stated should be the effective (actual) price to be charged
5 for the service as well as the service's maximum rate.

6 (l) In order to protect the Applicant's customers,

- 7 1. the Applicant shall procure a performance bond in an amount of at least
8 \$25,000 to cover 60 days revenue from its customers, and any
9 prepayments or deposits collected from the Applicant's customers; and
10 the amount of the performance bond shall be increased if at any time it
11 would be insufficient to cover the aforementioned requirement;
- 12 2. if the Applicant desires to discontinue service, it should file an
13 application with the Commission pursuant to Commission rules;
- 14 3. the Applicant shall notify each of its customers and the Commission 30
15 days prior to filing an application to discontinue service pursuant to
16 Commission rules; and any failure to do so should result in forfeiture of
17 the Applicant's performance bond;
- 18 4. proof of the performance bond for a minimum of \$25,000 should be
19 docketed within 30 days of a Decision in this matter, or prior to the
20 provision of service, whichever is first; and
- 21 5. after one year of operation under the Certificate granted by the
22 Commission, Staff recommends that the Applicant be allowed to file a
23 request for cancellation of its established performance bond. Such
24 request must be accompanied by information demonstrating the
25 Applicant's financial viability. Upon receipt of such filing and after
26 Staff review, Staff will forward its recommendation to the Commission
27 for a Decision that the requested cancellation is in the public interest.

28 8. Staff further recommended approval of ServiSense.com, Inc.'s applications subject to
the following conditions:

- 29 (a) That the Applicant file conforming tariffs within 30 days of an Order in this
30 matter, and in accordance with the Decision;
- 31 (b) That the Applicant file in this Docket, within 18 months of the date it first
32 provides service following certification, sufficient information for Staff
33 analysis and recommendation for a fair value finding, as well as for an analysis
34 and recommendation for permanent tariff approval. This information must
35 include, at a minimum, the following:
 - 36 1. A dollar amount representing the total revenue for the first twelve months
37 of telecommunications service provided to Arizona customers by
38 ServiSense.com, Inc. following certification, adjusted to reflect the
39 maximum rates that the Applicant has requested in its tariff. This adjusted
40 total revenue figure could be calculated as the number of units sold for all
41 services offered times the maximum charge per unit.

2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by the Applicant following certification.

3. The value of all assets, listed by major category, including a description of the assets, used for the first twelve months of telecommunications services provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

(c) ServiSense.com, Inc.'s failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate of Convenience and Necessity and of the tariffs.

9. The Staff Report also stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

10. On March 19, 2001, a Procedural Order was issued requiring exceptions to the Staff Report or a request that a hearing be set, to be filed by May 23, 2001. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set.

11. On August 29, 2000, the Arizona Court issued its Opinion in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the Arizona Constitution requires the Commission to determine fair value rate bases for all public service corporations in Arizona prior to setting their rates and charges."

12. On October 26, 2000, the Commission filed a Petition for Review to the Supreme Court.

13. On February 13, 2001, the Commission's Petition was granted.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold local exchange and interexchange telecommunications

1 services is in the public interest.

2 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
3 resold local exchange and interexchange telecommunications services in Arizona.

4 6. Staff's recommendations in Findings of Fact No. 7 and 8 are reasonable and should be
5 adopted.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of ServiSense.Com, Inc. for a Certificate
8 of Convenience and Necessity for authority to provide competitive resold local exchange and
9 interexchange telecommunications services is hereby granted.

10 IT IS FURTHER ORDERED that ServiSense.Com, Inc. shall comply with Staff's
11 recommendations as set forth in Findings of Fact Nos. 7 and 8.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
2 ServiSense.Com, Inc. shall notify the Compliance Section of the Arizona Corporation Commission of
3 the date that it will begin or has begun providing service to Arizona customers.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN  COMMISSIONER  COMMISSIONER

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11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 28th day of June, 2001.

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17 BRIAN C. McNEIL
18 EXECUTIVE SECRETARY

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3 DOCKET NO.:

T-03893A-00-0447

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